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8 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
9 **SAN JOSE DIVISION**

10 ) Case No. C 06-5353 JW

11 In Re Affymetrix  
12 Derivative Litigation

) **STIPULATION AND [Proposed]**  
) **ORDER ESTABLISHING A NEW**  
) **BRIEFING SCHEDULE FOR MOTIONS**  
) **TO DISMISS**

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14 This Document Relates To:  
15 ALL ACTIONS  
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**STIPULATION**

Whereas, there is presently a consolidated shareholder derivative action against certain of the present and former officers and directors of Affymetrix, Inc. ("Affymetrix") on file in this Court which is styled as In re Affymetrix Derivative Litigation, Case No. C 06 5353 JW;

Whereas, on November 20, 2006, the Court entered an Order Consolidating Cases; Appointing Lead Plaintiffs and Lead Counsel; Setting Briefing Schedule, which directed Lead Plaintiffs to file a Consolidated Complaint no later than January 10, 2007, and established the following briefing schedule on Defendants' motion to dismiss: Defendants' motion to dismiss due February 19, 2007; opposition to motion to dismiss due April 2, 2007; and Defendants' reply due April 23, 2007. The Court also set a hearing on the motion to dismiss for May 14, 2007 at 9:00 a.m.;

Whereas, Lead Plaintiffs filed and served a Verified Consolidated Shareholder Derivative Complaint ("Consolidated Complaint") on January 10, 2007;

Whereas, on February 19, 2007, nominal defendant Affymetrix and all individual defendants (collectively, the "Defendants") filed and served a motion to dismiss the Consolidated Complaint, and individual defendant Ronald Verdoorn also filed a motion to dismiss the claims asserted against him in the Consolidated Complaint (collectively, the "Motions");

Whereas, on April 2, 2007, in lieu of an opposition to the Motions, Lead Plaintiffs filed and served a Verified Amended Consolidated Shareholder Derivative Complaint ("Amended Consolidated Complaint");

Whereas, in view of Lead Plaintiffs' filing of an Amended Consolidated Complaint, the parties wish to clear the Court's docket of the pending Motions and to establish a briefing schedule for any motions to dismiss the Amended Consolidated Complaint;

IT IS HEREBY STIPULATED by and between the undersigned and so ordered by the Court as follows:

1. The Consolidated Complaint is deemed withdrawn and superseded by the Amended Consolidated Complaint as of April 2, 2007.
2. The Motions to dismiss the Consolidated Complaint are deemed withdrawn.

3. Any motions to dismiss the Amended Consolidated Complaint shall be filed no later than May 21, 2007.

4. Lead Plaintiffs' opposition to any motions to dismiss the Amended Consolidated Complaint shall be filed no later than July 9, 2007.

5. Any reply in support of any motion to dismiss the Amended Consolidated Complaint shall be filed no later than July 30, 2007.

6. The hearing on any motion to dismiss that may be filed by Defendants is set for August 20, 2007 at 9:00 a.m.

Dated: April 16, 2007

DAVIS POLK & WARDWELL

By: /s/ Rajat Soni

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*Counsel for Defendants*

Dated: April 16, 2007

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*Counsel for Individual Defendants*

Dated: April 16, 2007

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*Counsel for Lead Plaintiffs*

Dated: April 16, 2007

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*Counsel for Lead Plaintiffs*

\* \* \*

**ORDER**

IT IS SO ORDERED.

DATED: April 24 2007

James Ware  
JAMES WARE  
United States District Judge